(2022) 05 OHC CK 0084

In the Orissa High Court

Case No : Writ Petition (C) No. 6866 Of 2022

Debasis Behera APPELLANT

Vs

State Bank Of India, Bhubaneswar And Others RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Citation : (2022) 05 OHC CK 0084

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Anjan Kumar Biswal, C. Kasturi

Judgement

Arindam Sinha, J

1. Mr. Biswal, learned advocate appears on behalf of petitioner and submits, in the counter filed there is no denial of facts. He refers to paragraph-4 of the writ petition, reproduced below.

"4. That it is humbly submitted that the petitioner has repaid the loan installments in time till March, 2020 and thereafter could not be able to deposit the installments in time due to the restrictions imposed by the Government in respect of movement of the vehicle for the COVID-19 Pandemic situation throughout the State. In view of the restrictions imposed by the Government the vehicle of the petitioner could not ply since the vehicle is a bus. The bus of the petitioner was permitted to ply the bus from Berhampur to Rourkela and out of the income from the bus the petitioner regularly repaid the loan amount till March, 2020 and also maintaining his

livelihood. Copy of the Registration Certificate is filed herewith as Annexure-2."

Drawing attention to impugned sale notice dated 11th January, 2022, he points out that the first notice is dated 16th September, 2021, by which there was intimation that the bank wanted possession of the vehicle unless the called up loan is repaid. By impugned notice, though final opportunity of seven days was given to repay, the bus was taken possession in the meantime. Sale notice has not yet been published.

2. Ms. Kasturi, learned advocate appears on behalf of opposite party no.2-bank. She relies upon paragraph-11 in her client's counter to submit, sufficient time and opportunity were there to be availed by petitioner but he intentionally avoided. His requirement was to repay the loan along with interest. Paragraph-11 from the counter is reproduced below.

"11. That it is humbly submitted that the sale notice was dt.11.1.2022 but the vehicle put to Auction Sale (on 9.2.22, 14.2.22) held on 16.2.22, there was sufficient time and opportunity was there to avail it by the petitioner who intentionally avoided."

3. There is no reference in the counter in dealing with the statements of fact pleaded in several paragraphs of the petition. Paragraph-4 of the writ petition has not been dealt with at all. There is no disclosure in support of statements made in paragraph-11 in the counter. There is no dispute, therefore, that petitioner committed default by not paying installment due in April, 2020 and thereafter. The bank commenced action on default by its first letter dated 16th September, 2021. There is no explanation for the delay.

4. Court will hear the bank on adjourned date on why there should not be presumption of waiver of right to take possession of the vehicle and if the possession taken thereafter being wrongful.

5. Interim order will continue till next date.

6. List on 19th May, 2022 as prayed for by Ms. Kasturi.

7. Pendency of the writ petition will not prevent the parties from working things out.

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